

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**WALDEMAR CHABOWSKI,
Plaintiff**

NOTICE OF REMOVAL

v.

Civil Action No.:

**CATERPILLAR INC. and
and MILTON CAT,
Defendants.**

**TO THE HONORABLE JUDGES OF THE SAID
DISTRICT COURT OF THE UNITED STATES:**

Petitioner Milton CAT, defendant in the above-captioned action, respectfully requests, pursuant to 28 U.S.C.A. §1441, that this matter be transferred from the Erie County Supreme Court to the United States District Court for the Western District of New York and respectfully represents as follows:

1. Milton CAT was served with the Summons and Complaint in this case on January 26, 2007.
2. Based upon the allegations contained within the Complaint, the requirements of 28 U.S.C.A § 1332 are satisfied and this Court properly has jurisdiction over this matter.
3. Notice of Removal is timely because it is filed within the thirty-day period prescribed by 28 U.S.C.A. §1446 (b).

GROUND FOR REMOVAL

4. Jurisdiction over this removed action is premised on 28 U.S.C.A. §1441(a) because this action could originally have been filed in this Court pursuant to 28 U.S.C.A. § 1332. Federal diversity jurisdiction exists over this action because all parties are completely diverse. Plaintiff

alleges severe and permanent bodily injuries. Accordingly, the amount in controversy exceeds \$75,000.

DIVERSITY OF JURISDICTION

Citizenship

5. Upon information and belief, the named plaintiff in this action is a resident of the State of New York. Defendant Caterpillar is incorporated under the laws of Delaware and has its principal place of business in Illinois. Defendant Milton CAT is incorporated under the laws of New Hampshire and has its principle place of business in Massachusetts. Accordingly, there is complete diversity between the plaintiff and the defendants in this matter. *See* 28 U.S.C.A. §1332(a)(1).

Amount In Controversy

6. The Complaint alleges negligence, breach of express and implied warranties, and strict liability. In evaluating a complaint that contains this kind of open-ended claim for damages, a court should appraise the amount in controversy according to a reasonable reading of the value of the rights being litigated, and should retain federal jurisdiction if there is a "reasonable probability" that the plaintiff's claim is in excess of the jurisdictional amount. *Tangkook America, Inc. v. Shipton Sportswear, Inc.*, 14 F.3d 781, 784 (2d Cir. 1994); *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir. 1993).

7. Given the plaintiffs' allegations of "severe and permanent injuries to plaintiff's lumbar spine," the total amount of a potential recovery under these claims clearly exceeds \$75,000.

8. Complete diversity of citizenship exists. As a result of the claimed injuries and damages, Milton CAT avers that the amount in controversy exceeds \$75,000 exclusive of interests and costs.

9. Accordingly, Milton CAT respectfully requests that this action be removed from the Erie County Supreme Court to the United States District Court for the Western District of New York, pursuant to 28 U.S.C.A. §§1332(a)(1) and 1441(a).

10. Concurrent with the filing of this Notice of Removal, Milton CAT is giving written notice of the Notice of Removal to the New York Supreme Court, Erie County and to the attorneys for plaintiff and defendant Caterpillar, Inc.

11. In accordance with Local Rule 81(a)(3), an index of all documents filed in the state court action and a copy of the documents are annexed hereto as Exhibit A.

12. Defendant Caterpillar Inc. does not object to the removal of this action and joins in Milton CAT's demand for a jury trial in this matter.

WHEREFORE, petitioner Milton CAT respectfully requests that this action be removed from the Erie County Supreme Court to this Honorable court and respectfully requests an Order of Removal.

DATED: February 21, 2007

McNAMEE, LOCHNER, TITUS
WILLIAMS, P.C.

By:



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